

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John deBary	Team: Team # 2	CCRB Case #: 200513049	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/31/2005 10:30 AM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 4/30/2007	EO SOL 4/30/2007	
Date/Time CV Reported Mon, 10/31/2005 11:49 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/31/2005 11:49 AM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Witness(es)</b>	<b>Home Address</b>				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. POM Eric Dym	01800	933762	120 PCT		
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>		
1. POF Michele Rodriguez	17343	898415	120 PCT		
<b>Officer(s)</b>	<b>Allegation</b>			<b>Investigator Recommendation</b>	
A.POM Eric Dym	Abuse: PO Eric Dym threatened to arrest § 87(2)(b)				

## SYNOPSIS

On October 31, 2005 at approximately 11:50AM, § 87(2)(b) contacted the CCRB via phone and filed this complaint. On October 31, 2005 at approximately 10:30AM, § 87(2)(b) was at home at § 87(2)(b) in Staten Island. § 87(2)(b) has had an ongoing conflict with her neighbor, § 87(2)(b) of § 87(2)(b) over ownership of a shared fence. § 87(2)(b) had called 911 because § 87(2)(b)'s dog was causing damage to what he said was his fence. § 87(2)(b) dialed 911 that day to inform the police that the fence was on her property and that it was ok that her dog approach the fence. Two officers responded to both calls, PO Eric Dym and PO Michele Rodriguez of the 120<sup>th</sup> Precinct. § 87(2)(b) stated that when the officers responded to her call, she saw a hand reaching over her fence holding a can. § 87(2)(b) also stated PO Eric Dym told her that if she did not move the dog away from the fence she would be arrested (**allegation A**).

§ 87(2)(b), § 87(2)(g)

## SUMMARY OF COMPLAINT

### § 87(2)(b)'s CCRB Interview

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was interviewed at the CCRB on November 21, 2005, [enclosure 4A-G]. On October 31, 2005, at approximately 11:30AM, § 87(2)(b) was at her mother and father's home, where she resides, at § 87(2)(b) in Staten Island. She heard her dog, a Black Lab and Pitbull mix, barking. She looked outside and observed a hand reaching over the fence. Her dog is kept on a long leash that is attached to a tree; the dog is restrained, but allowed to be close to the fence. § 87(2)(b) exited her house and approached the fence. At that point, § 87(2)(b) noticed that the individual whose hand was over the fence was holding an object. § 87(2)(b) was not certain what it was, but she guessed that it was mace or pepper spray. § 87(2)(b) then saw two uniformed police officers, a male and a female, standing outside her fence near her dog. (The officers were identified through the investigation as PO Eric Dym and PO Michelle Rodriguez.) PO Dym told § 87(2)(b) "move the dog away from the fence or I'll arrest you." § 87(2)(b) told PO Dym that he did not have to spray the dog with pepper spray, although she did not observe her dog being sprayed. She said this because she believed the individual holding the spray can to be PO Dym. She told PO Dym that she was going to move the dog away from the fence. She moved the dog into the house. She also informed the officers that she was going to call the NYPD Internal Affairs Bureau for the threat of arrest. She did call IAB later that day. When she returned from bringing the dog inside, PO Dym told § 87(2)(b) that they had received a number of complaints about the residents of § 87(2)(b). § 87(2)(b) stated that she has made a number of complaints to the police about a neighbor with whom she and her family had been having problems. She stated that because of this, she is harassed by police officers in her neighborhood, who call her unspecified names.

§ 87(2)(b) was not able to provide a detailed description of the officers because the officers were standing behind a tall fence that was mostly solid and not easily seen through. The officers were both white or pale skinned. The female officer had long brown hair. § 87(2)(b) said that she never saw their faces directly and did not ask for or was given shield numbers or names.

§ 87(2)(b) described the nature of her problem between her neighbor and her family. She stated that her neighbor had previously stolen her family's property, and that they have a video camera pointed at her parent's house.

### **Results of Photo Array**

Although the identity of the officers is not in dispute, § 87(2)(b) was shown a photo array that included both PO Dym and PO Rodriguez [enclosure 4C-D]. She was not certain at all of the identity of the officers and

was not able to positively identify PO Rodriguez's photo. However she did indicate the correct picture of PO Dym, but stated that she was not sure.

## **RESULTS OF INVESTIGATION**

### **Attempts to Locate Witnesses**

In her interview statement, § 87(2)(b) gave the name of her neighbor, § 87(2)(b). Using the SPRINT report a § 87(2)(b) was located at the address from where the complaint about § 87(2)(b)'s dog was made. On January 30, 2006 the undersigned investigator contacted § 87(2)(b) by phone and took a statement about the incident. § 87(2)(b) stated that he did not hear any of the officers threaten to arrest § 87(2)(b) if she did not put the dog away. He stated that the dog was making so much noise biting the fence and barking that the officers had to ask § 87(2)(b) to relocate the dog just so that they could have a conversation with § 87(2)(b) and § 87(2)(b).

### **Officer Identification**

PO Dym and PO Rodriguez were identified by the 120 Precinct roll call [enclosure 10] and the sprint print-out of the 911 call made by § 87(2)(b) [enclosure 9A-B]. On October 31, 2005, PO Dym and PO Rodriguez were assigned to the sector § 87(2)(b). The sprint print-out indicates that sector N responded to the call.

### **PO Dym's CCRB Interview**

PO Eric Dym was interviewed at the CCRB on January 05, 2006 [enclosure 6A-B]. On October 31, 2005, PO Dym was working a 0705 by 1540 tour. He was working with PO Michelle Rodriguez and was assigned to sector patrol. He was in uniform and in a marked Patrol Car. PO Dym's relevant memo book entries appear verbatim below [enclosure 5A-B].

0951: § 87(2)(b)  
1021: § 87(2)(b) A.S.P.C.A. § 87(2)(b).

On October 31, 2005, at approximately 10:30AM, PO Dym and his partner, PO Michelle Rodriguez responded to a 911 call from the neighbor of § 87(2)(b) identified through the investigation as § 87(2)(b). § 87(2)(b) was complaining that § 87(2)(b)'s dog was chewing at the fence between their houses. PO Dym described § 87(2)(b) as "terrified" of the dog. § 87(2)(b) brought PO Dym and PO Rodriguez to the backyard to observe the dog. PO Dym described the dog as "vicious." The dog was a large Pitbull and it appeared, although it was on a leash, that it could chew through the fence. PO Dym advised the neighbor to contact the ASPCA, because PO Dym judged that at some point the dog would get through the fence. PO Dym observed the owner of the dog, § 87(2)(b) through the fence and asked her to restrain the dog because it was terrifying § 87(2)(b). § 87(2)(b) complied.

As PO Dym and PO Rodriguez were in the yard with § 87(2)(b) a 911 call from § 87(2)(b) was radioed to them. They went around the block to § 87(2)(b)'s house. PO Dym described § 87(2)(b)'s demeanor as "irate." She said that she wanted to show them the deed to the house. PO Dym advised her that the property damage and the dispute over the ownership of the fence was a civil matter and they could not do anything for her. PO Dym asked § 87(2)(b) to please put the dog on a shorter leash, or they might call ASPCA. § 87(2)(b) did not comply with PO Dym's suggestion to put the dog on a shorter leash. PO Dym said that notification of the ASPCA was advisable because the dog could threaten the safety of neighbors if it managed to chew through the fence and/or escape from its leash. He stated that this was the only way that police could respond to such a situation, because threatening canine behavior is not something that falls under police purview. PO Dym stated that he did not approach the dog while on § 87(2)(b)'s property.

PO Dym said that at no point did he discharge pepper spray. PO Dym said that he did not recall drawing pepper spray. He stated that he did not say to § 87(2)(b) "get your dog away from the fence or I'll arrest you."

### **PO Rodriguez's CCRB Interview**

PO Michelle Rodriguez was interviewed at the CCRB on January 05, 2006[enclosure 8A-B]. On October 31, 2005, PO Rodriguez was working a 0705 by 1540 tour. She was in uniform and assigned to sector patrol; she was in a marked RMP and her partner was PO Eric Dym. She had no memo book entries relevant to this incident [enclosure 7A-B].

On October 31, 2005 at approximately 10:30AM, PO Rodriguez and PO Dym responded to a neighbor dispute. A man, identified by the investigation as § 87(2)(b) § 87(2)(b) stated that a neighbor, § 87(2)(b) has a vicious dog that continues to bite at his fence. PO Rodriguez informed § 87(2)(b) that they could not do anything about the dog biting the fence because it was a civil matter. She advised him to call the ASPCA police. About 10 minutes following the original complaint, while PO Dym and PO Rodriguez were still at § 87(2)(b)'s house another complaint was called in, this time by § 87(2)(b) PO Dym and PO Rodriguez got in their vehicle and responded to § 87(2)(b)'s home. § 87(2)(b) wanted to prove to PO Rodriguez that it was her fence and she produced some kind of paperwork. § 87(2)(b) wished to have a report filed and when PO Rodriguez informed her that there was nothing that they could do criminally, § 87(2)(b) told PO Rodriguez and PO Dym that she was going to call Internal Affairs on them.

PO Rodriguez said that she observed the dog chewing on the fence. The dog is tied up on a leash, but it can reach the fence. PO Rodriguez said that the dog was tearing the aluminum fence with its teeth. PO Rodriguez indicated that the dog is a Pitbull.

At no point in the interaction between PO Rodriguez and § 87(2)(b) did PO Rodriguez pull out or discharge OC spray nor did she say "get the dog away from the fence or I'll arrest you."

### **NYPD Documents**

-Roll Call [enclosure 10]: PO Dym and PO Rodriguez were working Tour 2 on October 31, 2005. They were partners and assigned to vehicle patrol of sector § 87(2)(b)

-Sprint [enclosure 9A-B]: The sprint reflects that PO Dym and PO Rodriguez responded to the 911 call made by § 87(2)(b) The job occurred in the 'N' sector of the 120<sup>th</sup> Precinct. The sprint states that the call was identified as "non-crime" and referred to another agency.

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) ]

### **Officer CCRB History**

As of January 11, 2006, PO Dym has no substantiated CCRB allegations [enclosure 1].

## CONCLUSIONS AND RECOMMENDATIONS

### **Disputed and Undisputed Facts**

It is not in dispute that PO Dym and PO Rodriguez responded to § 87(2)(b)'s home on October 31, 2005. § 87(2)(b), § 87(2)(g) (2)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### **Allegations Not Plead**

PO Eric Dym threatened to use pepper spray against § 87(2)(b)'s dog. PO Dym stated that he did not approach the fence or discharge pepper spray at the dog. By § 87(2)(b)'s own testimony it is unclear if someone was holding a can, who it was and whether it was discharged. Also by this testimony, it is unclear if whatever was in the hand of the individual was pepper spray or anything else. This allegation is not plead because it is not even certain if the hand seen reaching over § 87(2)(b)'s fence was a police officer's let alone PO Dym's.

### **Allegation B – PO Eric Dym threatened to arrest § 87(2)(b)**

PO Dym did advise § 87(2)(b) to move the dog away from the fence. In his testimony, he stated that he did not threaten to arrest § 87(2)(b) § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: